STATE OF MICHIGAN

COURT OF APPEALS

RIVER INVESTMENTS, LCP, LLC, Plaintiff-Appellant,	UNPUBLISHED August 30, 2011
v	No. 298253 St. Clair Circuit Court
WATSON BROTHERS COMPANY, Defendant-Appellee.	LC No. 09-001995-CZ

Before: TALBOT, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

In this action for breach of implied warranty, plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and dismissing plaintiff's first amended complaint as barred by MCL 600.5839(1). We affirm.

In 2001, plaintiff contracted with defendant for defendant to design and install a replacement air conditioning system for a four-story office building. Defendant designed and installed the system that same year. In 2005, 2007, and 2008, plaintiff experienced problems with the air conditioning system; a compressor and chillers failed. In 2009, a professional engineering firm, hired by plaintiff to investigate the cause of the system's failures, determined that the failures were the result of the design of the system. Plaintiff, thereafter, sued defendant. In its first amended complaint, plaintiff claimed that defendant breached the implied warranty that the air conditioning system was fit for use and properly designed for the office building. The trial court granted summary disposition under MCR 2.116(C)(7) to defendant. Relying on *Travelers Ins Co v Guardian Alarm Co of Mich*, 231 Mich App 473; 586 NW2d 760 (1998), the trial court held that because plaintiff did not sue defendant until more than six years after plaintiff used or accepted the air conditioning system, plaintiff's claim for breach of implied warranty was barred by the six-year limitations period contained in MCL 600.5839(1).

We review de novo a trial court's ruling on a motion for summary disposition. *Shay v Aldrich*, 487 Mich 648, 656; 790 NW2d 629 (2010). Summary disposition is proper under MCR 2.116(C)(7) if "[t]he claim is barred because of . . . statute of limitations . . . ." In reviewing a motion brought under MCR 2.116(C)(7), we consider all documentary evidence and accept the complaint as factually accurate unless specifically contradicted by affidavits or other documentary evidence. *Shay*, 487 Mich at 656.

The issue on appeal, as it was below, is whether MCL 600.5839(1) applies to plaintiff's claim for breach of implied warranty. MCL 600.5805 provides, in pertinent part:

> (1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.
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> (14) The period of limitations for an action against a state licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property shall be as provided in section 5839.

MCL 600.5839(1) provides:

> No person may maintain any action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of such injury, against any state licensed architect or professional engineer performing or furnishing the design or supervision of construction of the improvement, or against any contractor making the improvement, more than 6 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement . . . .

At the time the trial court decided defendant's motion for summary disposition, this Court's case law held the six-year limitations period of MCL 600.5839(1) applied to all claims, including claims for breach of contract, against architects, engineers, and contractors arising out of improvements to real property. See *Travelers Ins Co*, 231 Mich App at 481; *Mich Millers Mut Ins Co v West Detroit Bldg Co, Inc*, 196 Mich App 367, 377-378; 494 NW2d 1 (1992). However, in *Miller-Davis Co v Ahrens Const, Inc*, 489 Mich 355, 368; ___ NW2d ___ (2010), which was issued two days before oral arguments in this case, the Supreme Court overruled *Travelers Ins Co* and *Mich Millers Mut Ins Co*. The Supreme Court held that MCL 600.5839(1) only applies to tort actions; it does not apply to claims for breach of contract. *Miller-Davis Co*, 489 Mich at 358, 364, 371. It reasoned that because MCL 600.5839(1) was referenced in MCL 600.5805, which sets forth the limitations periods for tort actions, but not MCL 600.5807, which provides for the limitations periods for claims for breach of contract, MCL 600.5839(1) does not apply to claims against architects, engineers, and contractors for breach of contract. *Id.* at 363-364. Therefore, based on *Miller-Davis*, whether MCL 600.5839(1) applies to plaintiff's claim for breach of implied warranty depends on whether the claim sounds in tort or contract.

To answer this question, we examine "the nature and origin" of plaintiff's cause of action. *Miller-Davis Co*, 489 Mich at 364. If the action "is founded on a 'consensual' duty or obligation or the breach of an 'express promise,'" it is an action to recover damages for breach of contract and governed by MCL 600.5807, but if it "is founded on a 'non-consensual duty' or one 'imposed by law,'" it is governed by MCL 600.5805. *Id.* at 364-365, quoting *Huhtala v Travelers Ins Co*, 401 Mich 118, 130-132; 257 NW2d 640 (1977). In *Huhtala*, the Supreme Court stated that, between contracting parties, where the "promise" to be enforced was not an express promise but was one that arose as a matter of law independent of the terms of the parties'

contract, a claim for breach of that promise was governed by MCL 600.5805. *Huhtala*, 401 Mich at 129-130.

Here, "the nature and origin" of plaintiff's claim for breach of implied warranty is not an express promise contained in the parties' contract. Rather, the promise that plaintiff seeks to enforce is a promise that arises as a matter of law independent of the terms of its contract with defendant. See *Heritage Resources, Inc v Caterpillar Fin Servs Corp*, 284 Mich App 617, 638; 774 NW2d 332 (2009) (stating that the implied warranties of merchantability and fitness for a particular purpose under the Uniform Commercial Code, MCL 440.1101 *et seq.*, arise by implication of law); Black's Law Dictionary (7th ed) (defining an implied warranty as "[a] warranty arising by operation of law because of the circumstances of a sale, rather than by the seller's express promise"). Because plaintiff's claim is founded on a duty imposed by law, the claim is governed by MCL 600.5805. And pursuant to MCL 600.5805(14), the limitations period for plaintiff's claim "shall be as provided in [MCL 600.5839]." Plaintiff filed the present lawsuit in 2009, and does not dispute that the lawsuit was filed more than six years after it used or accepted the air conditioning system. Accordingly, plaintiff's claim for breach of implied warranty is barred by the six-year limitations period of MCL 600.5839(1). The trial court reached the right result, albeit for the wrong reason, and we affirm the order granting summary disposition to defendant and dismissing plaintiff's first amended complaint. *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998).

Affirmed.

/s/ Michael J. Talbot
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher